U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES W. DOWNEY and DEPARTMENT OF THE NAVY, LONG BEACH NAVAL SHIPYARD, Long Beach, CA

Docket No. 02-218; Submitted on the Record;
Issued February 24, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he developed diabetes as a consequence of his accepted employment-related back and leg conditions.

The Office of Workers' Compensation Programs accepted that on April 30, 1985 appellant, then a 50-year-old shipwright, sustained a lumbar strain, nerve-root irritation and left leg sciatica when he slipped while standing on a pipe. Appellant subsequently underwent multiple surgeries, including L5-S1 decompression and fusion with pedicle screw fixation in 1989, L4-5 fusion surgery on September 2, 1992, L3-4 fusion and placement of cages on September 17, 1996 and hardware removal on October 20, 1998. On December 7, 1999 the Office additionally accepted that appellant developed thrombophlebitis of the left leg, causally related to his accepted condition and associated surgical procedures.

In a treatment note dated July 22, 1997, Dr. Stephen Ritland, a Board-certified neurological surgeon and treating physician, stated that, in addition to his other conditions, appellant had developed diabetes, which was "significantly related to his inactivity from injury and surgery."

On June 14, 2000 at the request of the Office, appellant underwent a second opinion examination by Dr. Keith W. Cunningham, a Board-certified internist, for the purpose of determining whether appellant's diagnosed diabetes was causally related to his accepted back and leg conditions. The Office provided Dr. Cunningham with a statement of accepted facts, a list of specific questions to answer and the relevant medical evidence of record. In his report Dr. Cunningham noted that appellant complained of having gained approximately 20 pounds over the past several years as a result of forced inactivity due to his back and leg conditions and further noted that physical examination revealed that appellant was 71 inches tall and weighed 240 pounds. After completing his physical examination and reviewing the medical records, Dr. Cunningham diagnosed Type II diabetes, well controlled, chronic back pain, status postmultiple surgeries, post-thrombotic syndrome and a history of drug abuse. In response to the Office's specific questions regarding the relationship, if any, between appellant's diagnosed

diabetes and his accepted condition, Dr. Cunningham stated that he believed that appellant's diabetes "was not a direct result of the claimant's modest weight gain over the last several years" and that "genetic factors are more likely." He explained that other modifiable risk factors included dietary change, increased activity as tolerated and cessation of tobacco. Dr. Cunningham added that while claimant's diabetes "could be exacerbated by weight gain" he doubted that the onset of appellant's diabetes was related to his back injury and any associated decreased physical activity.

In a decision dated October 12, 2000, the Office denied appellant's claim for consequential diabetes due to his accepted employment-related back and leg conditions.

The Board finds that appellant has failed to meet his burden of proof to establish that he developed diabetes as a consequence of his accepted employment-related back and leg conditions.

Appellant asserts that his Type II diabetes, diagnosed in 1997, was caused by his lack of physical activity and resultant weight gain, which was a consequence of his accepted back and knee injuries and associated surgeries. It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own conduct.[1] Once the work connected character of any condition is established, "the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[2] However, appellant bears the burden of proof to establish his claim for a consequential injury in the form of Type II diabetes due to his back and leg conditions and related surgeries.[3] As part of this burden, appellant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[4] Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's

[1] Larson, *The Law of Workers' Compensation* § 13.00; *see John R. Knox*, 42 ECAB 193 (1990). In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes: "When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Larson, § 13.11.

[2] *Id.* at § 13.11(a); *see also Robert W. Meeson*, 44 ECAB 834 (1993) (where the Board determined that striking a deer in an automobile accident constituted an independent intervening cause which broke the chain of causation with respect to a claimant's prior employment back injury); *Anthony S. Wax*, 7 ECAB 330 (1954).

[3] An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the injury that any disability or specific condition for which compensation is claimed is causally related to the employment injury; *see Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucretia M. Nielson*, 42 ECAB 583 (1991).

condition, with stated reasons of a physician.[5] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of relationship of the diagnosed condition and the specific employment factors or employment injury.[6]

The Board finds that the weight of the medical opinion evidence rests with the well-rationalized narrative report of Dr. Cunningham, who provided a history of injury and appellant's medical history, reviewed the results of early and recent tests and performed a complete physical examination. He explained that, while continued weight gain could exacerbate appellant's diabetes, the onset of appellant's diabetes was not a direct result of his modest weight gain over the last several years, but was likely related to other genetic factors. He added that other risk factors included diet and tobacco use. While Dr. Ritland stated that he felt the onset of appellant's diabetes was related to appellant's inactivity from his employment injury, Dr. Ritland's opinion is not well rationalized as he did not offer sufficient explanation for his conclusion that appellant's weight gain caused or contributed to appellant's diabetes.[7] As appellant failed to submit sufficient probative medical evidence to establish that his current condition is a consequence of his accepted employment injuries, he has failed to establish the requisite causal relationship and the Office properly denied his claim.

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[6] *Id*.

[7] *Gary L. Fowler*, *supra* note 5; *Victor J. Woodhams*, 41 ECAB 345 (1989).

The decision of the Office of Workers' Compensation Programs dated October 12, 2000 is hereby affirmed.[8]

Dated, Washington, DC
February 24, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[8] The Board notes that, subsequent to appellant's September 19, 2001 appeal to the Board, the Office issued a decision dated November 6, 2001 regarding appellant's wage-earning capacity. The Board notes that the Act and applicable regulations do not prohibit adjudication by the Office on issues which are unrelated to the issues on appeal before the Board. *Douglas E. Billings*, 41 ECAB 880 (1990). However, the Board cannot consider this decision, as the Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. *Algimantas Bumelis*, 48 ECAB 679 (1997); *Jimmy L. Day*, 48 ECAB 654 (1997).